Supreme Court, U. S.
FILED
JUN 3 1980
MICHAEL RODAK, JR., CLERK

IN THE

UNITED STATES SUPREME COURT

NO. 79-1750

ROBERT E. FINGAR,

Petitioner,

versus

SEABOARD COAST LINE RAILROAD COMPANY,
A Virginia corporation,

Respondent.

REPLY BRIEF TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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Jacksonville, Florida 32202
904/356-1306

Attorneys for Respondent.

I. REFERENCE TO REPORTS OF OPINIONS DELIVERED BELOW

To Respondent's knowledge, the opinion of the United States District Court for the Middle District of Florida, Jacksonville Division, No. 73-413-Civ-J-S is unreported. The opinion of the Circuit Court of Appeals of the Fifth Circuit appears as Fingar vs. Seaboard Coast Line R. Co., 606 F.2d 648 (5th Cir. 1979).

II. QUESTION PRESENTED ON PETITION FOR CERTIORARI

Respondent believes that a more precise statement of the question presented for review upon this Petition for Certiorari is as follows: Did the Court of Appeals for the Fifth Circuit deny Petitioner due process of law by basing its decision on another ground than that relied upon by the United States District Court?

III. STATEMENT OF THE CASE

Respondent respectfully submits that a more concise and accurate statement of the case is as follows:

Petitioner originally brought an action in the United States District Court for the Middle District of Florida, Jacksonville Division, pursuant to the Railway Labor Act, 45 U.S.C. §153(q), to review an award and decision by the National Railroad Adjustment Board, First Division, No. 21787, Docket No. 42273.

The award of the National Railroad Adjustment Board, First Division, sought to be reviewed, conclusively found that under the controlling labor agreement then in existence, Peti-

tioner's appeal to the National Railroad Adjustment Board was untimely, and therefore his claim was time barred.

Thereafter, Respondent moved the District Court for Summary Judgment on several grounds, including res judicata, estoppel, and the final and binding nature of the award by the National Railroad Adjustment Board. Thereafter, the District Court entered Summary Judgment for Respondent Railroad on the grounds of res judicata.

Upon appeal to the United States Court of Appeals for the Fifth Circuit, the Court affirmed the entry of Summary Judgment on the grounds that Plaintiff was not entitled to relief since the National Railroad Adjustment Board properly dismissed his claim for failure to timely pursue his administrative remedies, even though the Appellate Court agreed that the District Court improperly applied the doctrine of res judicata in granting Summary Judgment for Respondent.

Thereafter, upon Petitioner's application for rehearing, the United States Court of Appeals for the Fifth Circuit denied said petition on February 4, 1980, and Petitioner filed this Petition for Certiorari, and same was docketed in the Supreme Court of the United States on the 5th day of May, 1980. Respondent received the Petition for Certiorari on May 8, 1980 and thereafter timely filed this Reply.

IV. ARGUMENT

Respondent respectfully submits that Petitioner has failed to cite any sufficient authority or grounds for invoking this Court's jurisdiction on the Petition for Certiorari. No conflicting decisions of this Court or of any other United States Court of Appeals has been submitted by Petitioner.

Petitioner merely states that the United States Court of Appeals for the Fifth Circuit has departed from the provisions of the Railway Labor Act, 45 U.S.C. §153(q). Petitioner has not demonstrated in what manner the Appellate Court departed from the requirements of the Railway Labor Act.

It would appear, as described in Respondent's version of the question presented for this Honorable Court, that Petitioner contends he was denied due process of law by the manner in which the United States Court of Appeals for the Fifth Circuit decided this case. What Petitioner is really complaining about, is that the Appellate Court affirmed the judgment of the District Court on different grounds than those relied upon by the District Court.

It has long been held since Justice Brandeis' opinion in *Helvering v. Gowran,* 302 U.S. 238, 58 S.Ct. 154, 82 L.Ed 224 (1937), that the settled rule is that, if the decision below is correct, it must be affirmed although the lower court relied upon a wrong ground or gave a wrong reason. Likewise, it has been held proper for an Appellate Court to affirm a correct decision of the lower Court even when that decision is based on an inappropriate ground or even though the lower Court relied on a different or even wrong reason. *PAAC v. Rizzo,* 502 F.2d 306 (3rd Cir. 1974), *cert. denied* 419 U.S. 1108, 95 S.Ct. 780, 42 L.Ed.2d 804; *U. S. v. Com. of Pa.,* 533 F.2d 107 (3rd Cir. 1976). See also: *Palmer v. R.F.C.,* 164 F.2d 466 (2nd Cir., 1947), *cert denied* 334 U.S. 811, 68 S.Ct. 1016, 92 L.Ed. 1742.

It is therefore abundantly clear under decisions of this Court and decisions of the United States Courts of Appeal that the Appellate Court in this case did not depart from the standard and regularly accepted practice of appellate review

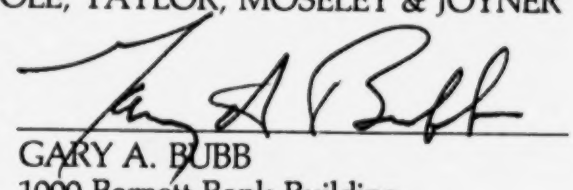
so as to deny Petitioner due process of law. The United States Court of Appeals for the Fifth Circuit had before it the entire record in this case, examined same, and rendered its decision accordingly.

It is respectfully submitted that Petitioner has utterly failed to demonstrate sufficient grounds for this Court to invoke its certiorari jurisdiction, and therefore, the Petition for Certiorari should be denied.

V. CONCLUSION

It is respectfully submitted that since Petitioner has failed to present this Honorable Court with any conflicting decisions of this Court or of other United States Courts of Appeal, and has failed to demonstrate with particularity his claimed denial of due process, his Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied.

TOOLE, TAYLOR, MOSELEY & JOYNER

By 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply Brief to Petitioner's Petition for Writ of Certiorari has been furnished to ROBERT E. FINGAR, Post Office Box 552, Callahan, Florida 32011, by U. S. Mail, this 2 day of June, 1980.

ATTORNEY